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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

VEDRAN VRCIC,

Plaintiff and Appellant,

v.

FRANCES LOUISE MARTIN,

Defendant and Respondent.

B219700

(Los Angeles County
Super. Ct. No. BC334186)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Kevin C. Brazile, Judge. Affirmed.

Law Offices of Philip P. DeLuca and Philip P. DeLuca for Plaintiff and Appellant.

Nemecek & Cole, Jonathan B. Cole, David B. Owen and Mark Schaeffer for
Defendant and Respondent.

* * * * *

The trial court granted judgment on the pleadings on appellant Vedran Vrcic's legal malpractice complaint against respondent Frances Louise Martin, based on the one-year statute of limitations under Code of Civil Procedure section 340.6, subdivision (a).¹ The trial court determined that appellant's causes of action accrued on the date appellant and his former wife executed a stipulation and settlement agreement that appellant alleges was negligently drafted by respondent, rather than at a later date when the family court construed the agreement against appellant. We agree with the trial court and affirm the judgment of dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant's complaint alleges the following: Appellant retained respondent to represent him in the underlying marital dissolution case brought by his former wife. Respondent "was negligent in the drafting and preparation of a Stipulation/Settlement Agreement on July 12, 2000, in connection with the documentation of transmutation of real estate . . . from the community to [appellant] as [his] separate property" During the trial in the underlying case on June 1 and 2, 2004, the family court found that the real property had not been transmuted from community to separate property because the stipulation did not include an express declaration from appellant's former wife that she intended to make such a transmutation, as required by Family Code section 852. The family court repeated its finding in a statement of decision filed March 30, 2005. As a result of respondent's negligence, appellant has suffered damages in excess of \$400,000.

Based on these allegations, the complaint alleges two causes of action against respondent for professional negligence and negligent misrepresentation. The second cause of action is also based on respondent's alleged misrepresentation that she could "competently represent" appellant.

¹ All statutory references shall be to the Code of Civil Procedure, unless otherwise noted.

Respondent filed a motion for judgment on the pleadings on the ground that appellant's complaint was time-barred. In response to her request, the trial court took judicial notice of three documents from the underlying case: (1) A substitution of attorney showing that respondent was replaced by new counsel on March 10, 2003; (2) a motion for joinder of appellant's mother filed by his former wife in December 2002, along with the wife's supporting declaration that she believed the real estate at issue was community property; and (3) a notice of joinder of appellant's brother filed by appellant's former wife in May 2003, along with a supporting declaration by her attorney that the real estate was wholly community property.

Appellant opposed the motion. Finding the complaint to be time-barred, the trial court granted the motion for judgment on the pleadings without leave to amend, and dismissed the complaint. This appeal followed.²

DISCUSSION

I. Violations of Procedural Rules.

As an initial matter, we briefly address respondent's contention that appellant has forfeited his contentions on appeal in light of his violations of several appellate procedural rules. For example, appellant's opening brief is defective because the statement of facts section contains numerous pages of "facts" that are unsupported by any citation to the record, and that do not appear anywhere in the record. California Rules of Court, rule 8.204(a)(1)(C) requires each brief to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Rule 8.204(a)(2)(C) requires an appellant's opening brief to "[p]rovide a summary of the significant facts limited to matters in the record." Appellant's opening brief does not comply with either of these mandatory requirements. Nevertheless, to the extent appellant's brief contains references to facts that are unsupported by appropriate

² A dismissal in writing, signed by the court, and filed in the case shall constitute a judgment and be "effective for all purposes." (§ 581d.)

citations to the record, we ignore them. (*Berg v. Taylor* (2007) 148 Cal.App.4th 809, 812, fn. 2.) We also ignore references to matters outside the record. (*People v. Smith* (2007) 40 Cal.4th 483, 507.)

Respondent also contends that appellant's appeal is defective because he has presented an inadequate record on appeal. Respondent correctly notes that appellant's appendix, like his brief, violates several rules of the California Rules of Court. For example, the appendix omits several documents that are required to be included by rules 8.124(b) and 8.122(b)(1). The appendix is not paginated. (Cal. Rules of Court, rules 8.124(d)(1) & 8.144(a)(1)(D).) It includes documents that are unnecessary to the resolution of the appeal. (Cal. Rules of Court, rule 8.124(b)(3)(A).) And it does not include documents that appellant should have realized respondent would rely on, such as her request to take judicial notice. (Cal. Rules of Court, rule 8.124(b)(1)(A).)

As respondent notes, appellant's procedural violations entitle us to deem his contentions on appeal as having been forfeited. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) While we are tempted to do so, we will instead consider the merits of this appeal. We do so because appellant's brief is not so incoherent and incomprehensible, nor the appellate record so inadequate and incomplete, that we cannot discern the nature of the case, what happened below, or what arguments appellant is making as grounds for error. We nevertheless find no merit to appellant's contentions.

II. Standard of Review.

In *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166, our Supreme Court set forth the well-established standard of review: "In an appeal from a motion granting judgment on the pleadings, we accept as true the facts alleged in the complaint and review the legal issues de novo. 'A motion for judgment on the pleadings, like a general demurrer, tests the allegations of the complaint or cross-complaint, supplemented by any matter of which the trial court takes judicial notice, to determine whether plaintiff or cross-complainant has stated a cause of action. [Citation.] Because the trial court's determination is made as a matter of law, we review the ruling de novo, assuming the

truth of all material facts properly pled.” We do not assume the truth of contentions, deductions, or conclusions of law in appellant’s complaint. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) We review the denial of leave to amend for abuse of discretion. (*Wedemeyer v. Safeco Ins. Co. of America* (2008) 160 Cal.App.4th 1297, 1302.)

III. Appellant’s Complaint is Time-Barred Because He Suffered Actual Injury More Than One Year Prior to Filing the Complaint.

Section 340.6, subdivision (a) provides that “[a]n action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.” The statute of limitations is tolled until a plaintiff sustains actual injury. (§ 340.6, subd. (a)(1).) It is also tolled while “[t]he attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.” (§ 340.6, subd. (a)(2).) In addition to appellant’s malpractice claim, the statute also applies to his negligent misrepresentation claim. (*Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 70 [“the trial court properly applied section 340.6 to the negligent misrepresentation causes of action and found them to be barred by the statute of limitations”].)

A. Signing the Stipulation

Appellant contends that the statute of limitations did not commence to run until June 2, 2004, when the family court in the underlying action ruled that the stipulation drafted by respondent and executed by appellant and his former wife on July 12, 2000 failed to meet the requirements of Family Code section 852 necessary to transmute community real property to appellant’s separate property. Appellant argues that until

June 2, 2004, he “suffered no actual damage and had no reason to believe any negligence had taken place on behalf of Respondent.”

Respondent counters that appellant’s contention is “simply wrong” and has been “repeatedly rejected by the courts.” She relies on four cases for the proposition that a plaintiff sustains actual injury to commence the running of the statute of limitations when he or she enters into an agreement that is the result of the alleged legal malpractice. In *Turley v. Woolridge* (1991) 230 Cal.App.3d 586, the court held that the appellant suffered “actual injury” from “the allegedly unequal community property division when she executed” the marriage termination agreement at issue, which became effective on the date of its execution. (*Id.* at p. 593.) The *Turley* court further stated: “The fact that she could have challenged the Agreement in an action for rescission or other contract relief, or the interlocutory judgment under section 473 or the court’s equitable powers did not affect the date she suffered actual harm. When she signed the purportedly unfair Agreement on the alleged negligent advice of counsel and thereby rendered it effective, all essential elements of her cause of action for legal malpractice had occurred. There was no justification for tolling the statute of limitations beyond that point.” (*Ibid.*)

In *Hensley v. Caietti* (1993) 13 Cal.App.4th 1165, 1175, where the plaintiff claimed she had signed an unfavorable marital settlement agreement on the advice of her attorney, the appellate court held that she sustained actual injury when she signed the agreement, not later when the ensuing judgment became effective. (*Id.* at pp. 1175–1176.) The *Hensley* court stated: “Negligent legal advice which induces a client to enter into a binding contract resolving marital property and support issues results in actual injury at the point of entry. Entering a contract is a jural act which alters the legal relations of the parties and creates an obligation. [Citation.] The tortious inducement to enter into a contract which imposes noncontingent obligations is actionable at the time of contracting.” (*Id.* at p. 1175.) The court went on to conclude the fact that some or all of the provisions of a marital settlement agreement are subsequently incorporated in a judgment, does not delay actual injury until the judgment takes effect. (*Ibid.*) “The injury is a consequence of the altered jural relations effected by entry into the contract.

The fact that at a later point obligations imposed as a result of a contract become subject to a different means of enforcement, i.e., contempt or an action on the judgment [citations], does not delay the injury which is attributable to the imposition of the obligations. The consideration that the injury attributable to entry into the contract may be remediable by the attack on the contract does not render the injury harmless.” (*Id.* at p. 1176.)

Similarly, in *Radovich v. Locke-Paddon* (1995) 35 Cal.App.4th 946, in which a husband claimed that his attorneys negligently caused him to sign documents waiving his community property rights in various assets, the appellate court held that the husband sustained actual injury when he signed the documents, not years later when his wife died and the community property was divided. (*Id.* at pp. 975, 977.) The *Radovich* court further held the fact that the husband had remedied some of his losses by filing litigation against third parties did not mean actual injury did not occur once he signed the documents: “[O]nce actual injury has been found, the fact the injury is not ‘irremediable’ is of no consequence to the section 340.6 issues.” (*Id.* at pp. 978–979.)

In *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, the plaintiff general partnership claimed that its attorneys negligently failed to advise it that it had to exercise a development right within three years, and the time had passed. The partnership filed litigation against a third party in an effort to revive the development right, but lost. (*Id.* at pp. 223–224.) The plaintiff contended that it did not sustain actual injury until it lost the third party litigation. (*Id.* at p. 225.) The *Foxborough* court disagreed, holding that actual injury occurred when the development right expired, not when the third party litigation was resolved. (*Id.* at p. 227.) “Thus, when malpractice results in the loss of a right, remedy, or interest, or in the imposition of a liability, there has been actual injury regardless of whether future events may affect the permanency of the injury or the amount of monetary damages eventually incurred.” (*Ibid.*) The court stated, “the statutory scheme does not depend on the plaintiff’s recognizing actual injury. Actual injury must be noticeable, but the language of the tolling provision does not require that it be noticed.” (*Ibid.*)

Appellant does not attempt to distinguish these cases from his own. Instead, he relies on *Baltins v. James* (1995) 36 Cal.App.4th 1193, where the alleged negligence was the attorney's opinion about how the appellate court would decide certain issues. As our Supreme Court noted in *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 755 (*Jordache*), "the propriety of the legal advice [in *Baltins*], and hence the existence and effect of error, depended on the future resolution of the issue adversely to the client." (*Id.* at p. 761.) The *Jordache* court stated: "By contrast, [respondent's] alleged professional negligence did not require an adjudication to indicate its existence. [Appellant's] claims . . . do not require another proceeding to determine the propriety of affirmative advice or actions." (*Ibid.*)

The cases cited by respondent support her theory that appellant sustained actual injury in 2000 when he entered into the allegedly negligently drafted stipulation. As respondent notes, the fact that the family court found in 2004 (during trial) and in 2005 (when judgment was entered) that appellant did not have sole ownership of the disputed property only "confirmed," but did not create, appellant's actual injury. "There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney's error and the asserted injury." (*Jordache, supra*, 18 Cal.4th at p. 752.)

Under the cases cited by respondent, appellant's actual injury occurred in July 2000 when he signed the allegedly faulty stipulation. Because respondent continued to represent appellant until March 10, 2003, the statute of limitations was tolled until that time. (§ 340.6, subd. (a)(2) [statute tolled while "[t]he attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred"].) Thus, appellant had until March 10, 2004 to file his action against respondent. Because he did not do so until May 31, 2005, his malpractice suit is time-barred. The court did not err in granting respondent's motion for judgment on the pleadings.

B. Attorney Fees Incurred to Address Malpractice

In his opposition to the motion for judgment on the pleadings, appellant concedes that in December 2002, his former wife hired new counsel “to assert community property rights” in real property purportedly covered by the July 2000 stipulation “because they were able to do so due to the negligence of [respondent].” In his opening brief on appeal, appellant also states that it was “[n]ot until December of 2002, when Appellant’s ex-wife [] petitioned the Court for review of the Order/Stipulation that Appellant was put on notice that there was a potential for damage.”

Thus, the inference can be made that when appellant substituted new counsel to replace respondent on March 10, 2003, he began incurring costs and attorney fees payable to his new counsel to respond to his former wife’s claims of ownership to the subject real property. Appellant has never taken the position that he did not incur such costs or fees. A plaintiff suffers actual injury and damages from an attorney’s negligence when he or she incurs legal fees to address the attorney’s negligence. “A client suffers damage when he is compelled, as a result of the attorney’s error, to incur or pay attorney fees.” (*Sirott v. Latts* (1992) 6 Cal.App.4th 923, 928.) In *Jordache, supra*, 18 Cal.4th 739, our Supreme Court stated that *Sirott* “properly found” that the plaintiff “sustained actual injury for purposes of section 340.6 when he incurred costs to defend the medical malpractice action [against him] because he had no malpractice insurance” as a result of his attorneys’ negligent advice. (*Jordache, supra*, at p. 759.) (See also *Bennett v. McCall* (1993) 19 Cal.App.4th 122, 126 [“In the instant case, appellant knew about respondents’ alleged negligence by June 1986, and paid a \$1,500 retainer fee to Summers on March 5, 1987, to represent him in the dissolution action and rectify the alleged negligence of respondent. Consequently, the court correctly determined that the statute of limitations began running at the latest on March 5, 1987”]; *Safine v. Sinnott* (1993) 15 Cal.App.4th 614, 617 [“Sinnott was injured on August 5, 1983, when he paid money he did not owe into the escrow account. He was injured again when he incurred costs and attorney fees in attempting to recoup those funds. That he might have been able to

recoup the funds would be relevant to the issue of amount of damages, but not to the issue of injury”].)

Thus, incurring attorney fees to address respondent’s alleged malpractice also constituted an event to begin the running of the statute of limitations on March 10, 2003.

IV. Leave to Amend.

Appellant contends that the trial court abused its discretion by denying him leave to amend his complaint. We disagree.

The burden of showing a reasonable possibility that a defect can be cured by amendment rests squarely on the appellant. (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 595, 604.) The appellant “‘must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43, quoting *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The plaintiff must set forth factual allegations that sufficiently state all required elements of the challenged causes of action, and the allegations “‘must be factual and specific, not vague or conclusionary.’” (*Rakestraw, supra*, at pp. 43, 44.) “Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer [or motion for judgment on the pleadings] without leave to amend.” (*Id.* at p. 44.)

Because appellant has “made no attempt to indicate how the complaint may have been amended to state a cause of action,” he “has failed to establish that the trial court abused its discretion.” (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 8; *Rakestraw v. California Physicians’ Service, supra*, 81 Cal.App.4th at p. 43 [“The assertion of an abstract right to amend does not satisfy this burden”].)

DISPOSITION

The judgment of dismissal is affirmed. Respondent is entitled to recover her costs on appeal.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ